

AMENDED IN SENATE MAY 6, 2008
AMENDED IN SENATE APRIL 24, 2008

SENATE BILL

No. 1762

Introduced by Senator Perata

February 22, 2008

An act to add Division 25.7 (commencing with Section 38700) to the Health and Safety Code, relating to greenhouse gas reduction representations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1762, as amended, Perata. Advertising: greenhouse gas credits.

Under existing law, a person or entity that represents that a consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of specified environmental terms, is required to maintain in written form in its records information and documentation supporting the validity of the representation, as specified. Existing law provides that it is unlawful for a person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. A violation of these requirements is a misdemeanor.

This bill would make it unlawful for a person or entity to represent in an advertisement, in promotional material on the Internet, or in any other sales or promotional materials made available to the public, for the sale or use of a greenhouse gas credit or emission reduction, that the credit or reduction reduces greenhouse gas emissions unless certain requirements are met. The bill would also require a person or entity that represents in an advertisement, in promotional material on the Internet, or in any sales or promotional materials, for the sale or use of a greenhouse gas credit or emission reduction, that the credit or emission

reduction results in a reduction of greenhouse gases to maintain in written form and make available to the public certain information and documentation supporting the validity of that representation. A violation of these provisions would ~~not be a crime, but would~~ be punishable by a specified civil penalty and would create a civil cause of action.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 25.7 (commencing with Section 38700)
2 is added to the Health and Safety Code, to read:

3
4 DIVISION 25.7. GREENHOUSE GAS REDUCTION
5 REPRESENTATIONS
6

7 38700. The Legislature finds and declares all of the following:

8 (a) Global warming poses a serious challenge to the world's
9 environment and economy.

10 (b) With increasing concern regarding climate change, there
11 has been an increase in the advertising, sale, and transfer of
12 greenhouse gas emission reduction credits, offsets, and similar
13 products designed to allow individuals or entities, or both, to
14 purchase emission reduction credits in lieu of actually making
15 those reductions themselves.

16 (c) Consumers and other members of the public have few
17 protections or standardized methods by which to ensure that they
18 are purchasing or obtaining emission reduction credits that actually
19 reduce greenhouse gases, reduce global warming, and improve the
20 environment.

21 (d) The purpose of this division is to provide consumers with
22 the protections needed to ensure that they are purchasing credits
23 that actually result in emission reductions and that warrant their
24 expenditures for those credits.

25 38701. (a) For the purposes of this division, "greenhouse gas
26 credit," "emission reduction," "credit," "offset," "reduction," or
27 any similar term, means a voluntary reduction in the production
28 of greenhouse gases undertaken for the purposes of selling, trading,
29 or otherwise providing the credit or emission reduction to another
30 party.

1 (b) For the purposes of this division, “person” has the same
2 meaning as set forth in subdivision (c) of Section 17577.1 of the
3 Business and Professions Code.

4 38702. It is unlawful for any person to represent in an
5 advertisement, in promotional material on the Internet, or in any
6 other sales or promotional materials made available to the public,
7 for the sale or use of a greenhouse gas credit or emission reduction,
8 that the credit or reduction reduces greenhouse gas emissions unless
9 it meets one or more of the following conditions:

10 (a) The credit or emission reduction has been approved by the
11 State Air Resources Board as being in compliance with Division
12 25.5 (commencing with Section 38500), including, but not limited
13 to, Section 38571.

14 (b) The credit or emission reduction complies with one or more
15 protocols for voluntary emission reductions of greenhouse gases
16 adopted by the California Climate Action Registry pursuant to
17 former Chapter 6 (commencing with Section 42800) of Part 4 of
18 Division 26, as effective on December 31, 2007.

19 (c) The person demonstrates, and discloses in any advertising
20 or other sales or promotional material made available to the public,
21 that the credit or emission reduction meets all of the following
22 conditions:

23 (1) The credit or emission reduction is quantifiable and
24 measurable.

25 (2) The credit or emission reduction is surplus, and is in addition
26 to any greenhouse gas emission reduction that otherwise would
27 occur.

28 (3) The credit or emission reduction is verifiable and enforceable
29 by a state, regional, or local agency within the State of California.

30 (4) The credit or emission reduction does not result in an
31 increase in the emission of criteria pollutants or toxic air
32 contaminants.

33 (5) *The credit or emission reduction does not result in adverse*
34 *environmental impacts, including impacts on species, habitat,*
35 *ecosystems, land use, biodiversity, air quality, water supply and*
36 *quality, access to food, and production of food.*

37 38703. (a) Any person who represents in an advertisement,
38 in promotional material on the Internet, or in any other sales or
39 promotional materials, for the sale or use of a greenhouse gas credit
40 or emission reduction, that the credit or emission reduction results

1 in a reduction in greenhouse gases, shall maintain in written form
2 and make available to the public all of the following information
3 and documentation supporting the validity of the representation:

4 (a)

5 (1) The basis for the claim, as provided under Section 38702.

6 (b)

7 (2) Information on any ~~significant~~ adverse environmental or
8 public health impacts associated with the creation and maintenance
9 of the credit or emission reduction, *including impacts on species,*
10 *habitat, ecosystems, land use, biodiversity, air quality, water supply*
11 *and quality, access to food, and production of food.*

12 (c)

13 (b) A retailer that does not initiate a representation by advertising
14 or through other means available to the public shall not be deemed
15 to be in violation of this section.

16 38704. (a) A violation of this division is punishable by a civil
17 penalty not to exceed two thousand five hundred dollars (\$2,500)
18 per violation, and by the cost of the purchase of the ~~emission~~
19 ~~reduction credit, offset, or emission reduction.~~ *credit, offset, or*
20 *reduction as defined pursuant to subdivision (a) of Section 38701.*

21 (b) A violation of this division creates a civil cause of action
22 that may be brought by an individual or a district attorney.

23 (c) Notwithstanding any other provisions of law, a violation of
24 this division is not a crime.